

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

B.C. PRODUCE, INC.,
AND
EATON & EUSTIS COMPANY.

Plaintiffs

VS.

BANANA JOE’S FARM STAND AND DELI, INC.,
AND JOSEPH M. FLAGG
A/K/A JOSEPH M. FLAGG, SR,

Defendants

CIVIL ACTION NO.
1:13-cv-10326

COMPLAINT

JURISDICTION AND VENUE

1. Jurisdiction is based upon 7 U.S.C. § 499e(c), the Perishable Agricultural Commodities Act, 7 U.S.C. § 499a et seq., [hereinafter “PACA”], and 28 U.S.C. §§ 1331 and 1332.
2. Venue in this District is based upon 28 U.S.C. § 1391 in that the Plaintiffs and Defendants have their principal place of business or residence in this District.

PARTIES

3. Plaintiff, B.C. Produce, Inc. [hereinafter “BC Produce”] is a Massachusetts corporation company, with an usual place of business in Chelsea, Suffolk County, Massachusetts,

engaged in the business of buying and selling wholesale quantities of perishable agricultural commodities [hereinafter “BC Produce”] in interstate commerce pursuant to PACA. BC Produce was at all pertinent times and is now licensed under PACA, License No. 19179618.

4. Plaintiff, Eaton & Eustis Company [hereinafter “Eaton & Eustis”] is a Massachusetts limited liability company, with an usual place of business in Chelsea, Suffolk County, Massachusetts, engaged in the business of buying and selling wholesale quantities of Produce in interstate commerce pursuant to PACA. Eaton & Eustis was at all pertinent times and is now licensed under PACA, License No. 19002412.
5. Defendant, Banana Joe’s Farm Stand and Deli, Inc. [hereinafter “Banana Joe’s.”] is a Massachusetts corporation, with an usual place of business in Worcester, Massachusetts, and was at all pertinent times engaged in the business of buying and selling wholesale quantities of Produce in interstate commerce pursuant to PACA. Banana Joe’s was at all pertinent times licensed under PACA, License No. 20040813. Upon information and belief, Banana Joe’s ceased operations on or about January 2013.
6. Defendant, Joseph M. Flagg, also known as Joseph M. Flagg, Sr. [hereinafter “Joseph Flagg”] is the President, Treasurer, Director and a shareholder of Banana Joe’s. and resides in Worcester, Massachusetts.

CLAIMS

COUNT I

Goods Sold And Delivered - BC Produce

7. The allegations in paragraphs 1 through 6 are incorporated as if fully set forth herein.

8. Banana Joe's owes BC Produce the sum of \$8,853.09 for Produce sold and delivered as more fully set forth on the account annexed as Exhibit A to the Complaint, incorporated herein by reference.

WHEREFORE, BC Produce demands judgment against Banana Joe's for the sum of \$8,853.09 plus interest at the rate of 18% per annum from January 31, 2013, attorneys fees and costs.

COUNT II
Contract - BC Produce

9. The allegations in paragraphs 1 through 10 are incorporated as if fully set forth herein.
10. On diverse dates, Banana Joe's contracted with BC Produce to purchase certain items of Produce at wholesale.
11. BC Produce performed its obligations and delivered the agreed upon Produce in Chelsea, Massachusetts.
12. Payment for all items purchased from BC Produce by Banana Joe's was due within 21 days of the date of purchase.
13. Banana Joe's has failed, neglected and refused to make payment of the agreed upon price.
14. Banana Joe's owes BC Produce the sum of \$8,506.00 plus interest from the due date of each invoice at the rate of 18% per annum, attorneys fees and costs.

WHEREFORE, BC Produce demands judgment against Banana Joe's for the sum of \$8,853.09 plus interest at the rate of 18% per annum from January 31, 2013, attorneys fees and costs.

COUNT III
Goods Sold and Delivered – Eaton & Eustis

15. The allegations in paragraphs 1 through 6 are incorporated as if fully set forth herein.

16. Banana Joe's owes Eaton & Eustis the sum of \$1,995.83 for Produce sold and delivered as more fully set forth on the account annexed as Exhibit B to the Complaint and incorporated herein by reference.

WHEREFORE, Eaton & Eustis demands judgment against Banana Joe's for the sum of \$1,995.83 plus interest at the statutory rate of 12% per annum from January 31, 2013 and costs.

COUNT IV
Contract - Eaton & Eustis

17. The allegations in paragraphs 1 through 6 and 16 are incorporated as if fully set forth herein.
18. On diverse dates, Banana Joe's contracted with Eaton & Eustis to purchase certain items of Produce at wholesale.
19. Eaton & Eustis performed its obligations and delivered the agreed upon Produce in Chelsea, Massachusetts.
20. Payment for all items purchased from Eaton & Eustis by Banana Joe's was due within 21 days of the date of purchase.
21. Banana Joe's has failed, neglected and refused to make payment of the agreed upon price for the Produce
22. Banana Joe's owes Eaton & Eustis the sum of \$1,956.00 plus interest at the rate of 12% per annum from the due date of each invoice.

WHEREFORE, Eaton & Eustis demands judgment against Banana Joe's for the sum of \$1,995.83, plus interest at the statutory rate of 12% per annum from January 31, 2013 and costs.

COUNT V
PACA Trust Enforcement and
Dissipation of PACA Trust Assets By Responsible Individuals

23. The allegations in paragraphs 1 through 22 are incorporated as if fully set forth herein.
24. Plaintiffs sold Produce to Banana Joe's in interstate commerce.
25. Plaintiffs duly delivered said Produce which was accepted by Banana Joe's in Chelsea, Massachusetts.
26. At the time of the delivery of the Produce to Banana Joe's, Plaintiffs, and each of them, became the beneficiaries of a floating, non-segregated statutory trust (the "PACA Trust").
27. Plaintiffs and each of them duly preserved their status as beneficiaries of the PACA Trust and remain beneficiaries until payment in full is made for the Produce.
28. Banana Joe's is required to ensure that it has sufficient PACA Trust assets on hand to pay Plaintiffs at the time payment is due.
29. Until Plaintiffs are paid in full, the PACA Trust Assets consist of:
 - a. All of Banana Joe's produce;
 - b. All of Banana Joe's inventory of food and other products derived from produce;
 - c. All of Banana Joe's receivables and proceeds from the sale of produce, food and other products derived from produce; and
 - d. Any and all assets into which PACA Trust Assets have been transformed, commingled or dissipated.
30. Payment for the Produce is overdue and has not been made by Banana Joe's despite demand by the Plaintiffs.

31. Banana Joe's has dissipated the PACA Trust assets and has failed to make full payment promptly of all amount due to the Plaintiffs from the PACA Trust Assets in violation of PACA and the Department of Agriculture regulations promulgated thereunder, 7 C.F.R. § 46.2 et seq.
32. Joseph Flagg is and was at all time pertinent a "responsibly connected" person under PACA, 7 U.S.C. § 499a(9)(B).
33. Joseph Flagg was in a position to control the PACA Trust assets.
34. Joseph Flagg did control the PACA Trust assets.
35. Defendants have each failed to fulfill his and its statutory duties to preserve the PACA Trust assets and make full payment promptly to Plaintiffs for the Produce.
36. The failure of Banana Joe's and Joseph Flagg to maintain the PACA Trust Assets and pay Plaintiffs for the Produce constitutes the unlawful dissipation of PACA Trust assets.
37. As a result of the acts, neglect and failures of the Defendants, the Plaintiffs have not been paid and suffered great loss and damage.

WHEREFORE, Plaintiffs demand judgment against Banana Joe's and Joseph, jointly and severally, for the sum ten thousand eight hundred eleven and 16/100 dollars (\$10,848.16), such interest and attorneys fees as are determined to be due to each of the Plaintiffs and costs.

COUNT VI
(Mass. G.L. c. 93A §§ 2, 11)

38. The allegations in paragraphs 1 through 37 are incorporated as if fully set forth herein.
39. Plaintiffs, and each of them, are engaged in trade or commerce as defined by G.L. c. 93A in the Commonwealth of Massachusetts.

40. Banana Joe's is or was at all times pertinent engaged in trade or commerce as defined by G.L. c. 93A in the Commonwealth of Massachusetts.
41. Joseph Flagg was at all times pertinent engaged in trade or commerce as defined by G.L. c. 93A in the Commonwealth of Massachusetts..
42. Banana Joe's purchased and obtained Produce from the Plaintiffs, and each of them, with knowledge or reason to know that it would be unable to make timely payment therefor.
43. Banana Joe's purchased and obtained Produce from the Plaintiffs, and each of them, intending that payment would not be timely made therefor.
44. Joseph Flagg caused or permitted Banana Joe's to make the above referenced purchases.
45. Banana Joe's and Joseph Flagg, and each of them, caused or permitted the dissipation of the PACA Trust assets, leaving insufficient PACA Trust assets to make timely payment to the Plaintiffs.
46. The foregoing acts and practices constitute unfair or deceptive acts and practices.
47. The unfair and deceptive acts and practices were committed willfully and/or with knowledge or reason to known that the same violated G.L. c. 93A §§ 2 and 11.
48. As a result of the unfair and deceptive acts and practices of Banana Joe's, and Joseph Flagg, and each of them, the Plaintiffs have suffered and continue to suffer great loss and damage.

WHEREFORE, Plaintiffs demand judgment against Banana Joe's and Joseph Flagg, jointly and severally, as follows:

1. Single damages in the amount of their respective loss and damage;
2. Multiple damages of at least twice and up to three times the single damage award;

3. Interest at the greater of the contract rate or the statutory rate from the due date of each invoice;
4. Attorney fees and costs;
5. Such other and further relief as this court deems just and mete.

B.C. PRODUCE, INC., ET AL,
PLAINTIFFS
By Their Attorneys
OSBORNE & FONTE

/s/ Andrew M. Osborne
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EXHIBIT A

B.C. Produce, Inc.

Joseph Flagg
 Banana Joe's
 711-715 W. Boylston St.
 Worcester, MA 01606

Terms: net 21
 Interest 18%

Date	Invoice	Amount	Days Past Due	Interest to 1/31/2013	Payments	Balance
9/13/2012	10/4/2012	404349	130	119	7.63	137.63
9/13/2012	10/4/2012	404351	560	119	32.86	730.49
9/13/2012	10/4/2012	404365	288	119	16.90	1,035.39
9/14/2012	10/5/2012	404451	80	118	4.66	1,120.05
9/21/2012	10/12/2012	404915	120	111	6.57	1,246.62
9/21/2012	10/12/2012	404921	630	111	34.49	1,911.10
9/22/2012	10/13/2012	404974	70	110	3.80	1,984.90
9/27/2012	10/18/2012	405318	96	105	4.97	2,085.87
9/27/2012	10/18/2012	405321	48	105	2.49	2,136.36
9/29/2012	10/20/2012	405474	646	103	32.81	2,815.17
10/9/2012	10/30/2012	406089	42	93	1.93	2,859.10
10/16/2012	11/6/2012	406581	340	86	14.42	3,213.52
10/16/2012	11/6/2012	406594	420	86	17.81	3,651.33
10/20/2012	11/10/2012	406912	491	82	19.86	4,162.18
10/23/2012	11/13/2012	407053	340	79	13.25	4,515.43
10/23/2012	11/13/2012	407054	351	79	13.67	4,880.11
10/24/2012	11/14/2012	407126	198	78	7.62	5,085.72
10/26/2012	11/16/2012	407310	78	76	2.92	5,166.64
10/31/2012	11/21/2012	407561	108	71	3.78	5,278.43
10/31/2012	11/21/2012	407570	600	71	21.01	5,899.43
11/6/2012	11/27/2012	407942	1192	65	38.21	7,129.64
11/12/2012	12/3/2012	408319	224	59	6.52	7,360.16
11/16/2012	12/7/2012	408723	78	55	2.12	7,440.28
11/16/2012	12/7/2012	408724	340	55	9.22	7,789.50
11/17/2012	12/8/2012	408755	700	54	18.64	8,508.14
11/17/2012	12/8/2012	408756	336	54	8.95	8,853.09
		8,506.00			347.09	0.00
						8,853.09

EXHIBIT B

per diem 4.19

Eaton & Eustis Company

Joseph Flagg
Banana Joe's
711-715 W. Boylston St.
Worcester, MA 01606

Terms: net 21
Interest 12%

Date	Invoice	Amount	Days Past Due	Interest to 1/31/2013	Payments	Balance
10/9/2012	10/30/2012	387061	606.00	93	18.53	624.53
10/31/2012	11/21/2012	385871	180.00	71	4.20	808.73
11/9/2012	11/30/2012	388686	174.00	62	3.55	986.28
11/17/2012	12/8/2012	388636	132.00	54	2.34	1,120.62
11/30/2012	12/21/2012	388110	645.00	41	8.69	1,774.31
11/30/2012	12/21/2012	388111	52.00	41	0.70	1,827.02
12/8/2012	12/29/2012	379518	167.00	33	1.81	1,995.83
		1956.00			39.83	1995.83

per diem 0.64